

---

**To:** Annie's Homegrown, Inc. (tmboston@kling.com)  
**Subject:** TRADEMARK APPLICATION NO. 78524961 - FRUIT BUNNIES - A0017/2033  
**Sent:** 8/28/2006 3:07:25 PM  
**Sent As:** ECOM114@USPTO.GOV  
**Attachments:** Attachment - 1  
Attachment - 2  
Attachment - 3  
Attachment - 4

---

**UNITED STATES PATENT AND TRADEMARK OFFICE****SERIAL NO:** 78/524961**APPLICANT:** Annie's Homegrown, Inc.**CORRESPONDENT ADDRESS:**

Mark E. Baron  
Kirkpatrick & Lockhart Nicholson Graham  
State Street Financial Center  
One Lincoln Street  
Boston MA 02111-2950

**RETURN ADDRESS:**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

If no fees are enclosed, the address should  
include the words "Box Responses - No Fee."

**MARK:** FRUIT BUNNIES**CORRESPONDENT'S REFERENCE/DOCKET NO:** A0017/2033**CORRESPONDENT EMAIL ADDRESS:**

tmboston@kling.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 78/524961

Applicant is requesting reconsideration of a final refusal dated 2/17/2006.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

It is not necessary that a term describe all of the purposes, functions, characteristics or features of the goods/services to be merely descriptive. It is enough if the term describes one attribute of the goods/services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). TMEP §1209.01(b). In this instance, the term "bunnies" clearly describes a salient

feature of the goods, namely the physical appearance thereof.

See attached excerpts from the Trademark Register indicating, via disclaimer practice, trade recognition of similar descriptive use of the term in connection with similar products. Applicant has already acknowledged the descriptive significance of the other component of the mark, the word "fruit". As applied to fruit flavored snacks in the shape of a bunny, the proposed mark is directly, and plainly, descriptive. A mark that merely combines descriptive terms is registrable only if the composite creates a unitary mark with a separate, nondescriptive meaning. However, if, as here, each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of "commercial and industrial cooling towers and accessories therefor, sold as a unit"); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer software for use in development and deployment of application programs on global computer network); *In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE held to be merely descriptive of news and information service for the food processing industry); *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE merely descriptive of "facsimile terminals employing electrophoretic displays"); *In re Entenmann's Inc.*, 15 USPQ2d 1750 (TTAB 1990), *aff'd per curiam*, 928 F.2d 411 (Fed. Cir. 1991) (OATNUT held to be merely descriptive of bread containing oats and hazelnuts).

Accordingly, applicant's request for reconsideration is *denied*. 37 C.F.R. Section 2.64(b); TMEP Section 715.04.

The application file will be returned to the Trademark Trial and Appeal Board for resumption of the appeal.

/David H. Stine/  
Trademark Attorney  
Law Office 114  
(571)272-9229

**Print: Aug 28, 2006**

**75415983**

**DESIGN MARK**

**Serial Number**

75415983

**Status**

REGISTERED

**Word Mark**

BUNNY BABIES

**Standard Character Mark**

No

**Registration Number**

2300665

**Date Registered**

1999/12/14

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

MORLEY CANDY MAKERS, INC. CORPORATION MICHIGAN 23770 Hall Road P.O.  
Box 463237 Mount Clemens MICHIGAN 480463237

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: CANDY. First Use:  
1997/09/00. First Use In Commerce: 1997/09/00.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BUNNY" APART FROM THE  
MARK AS SHOWN.

**Filing Date**

1998/01/09

**Examining Attorney**

SPILS, CAROL

**Attorney of Record**

JOHN A ARTZ

# **BUNNY BABIES**

**Print: Aug 28, 2006**

**78426599**

**DESIGN MARK**

**Serial Number**

78426599

**Status**

REGISTERED

**Word Mark**

GUMMI BUNNY DAYS

**Standard Character Mark**

Yes

**Registration Number**

3053333

**Date Registered**

2006/01/31

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Candy Tech LLC CORPORATION ILLINOIS 151 North Hastings Buffalo Grove  
ILLINOIS 60089

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: Candy. First Use:  
2004/05/14. First Use In Commerce: 2004/10/15.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GUMMI BUNNY" APART  
FROM THE MARK AS SHOWN.

**Filing Date**

2004/05/27

**Examining Attorney**

FAINT, CATHERINE

# Gummi Bunny Days